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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION**

CENTER FOR BIOLOGICAL DIVERSITY

and

CENTER FOR ENVIRONMENTAL
 HEALTH

Plaintiffs,

vs.

ANDREW R. WHEELER, in his
 official capacity as Administrator of the
 United States Environmental Protection
 Agency,

Defendant.

Case No. 3:19-CV-02782-EMC

**PLAINTIFFS' NOTICE AND MOTION
 FOR SUMMARY JUDGMENT**

Action Filed: May 22, 2019

Hearing Date: January 23, 2020

Time: 1:30 PM

Courtroom: 5, 17th Floor

Judge: Hon. Edward M. Chen

NOTICE

Please take notice that the following Motion for Summary Judgment will be heard by the Honorable Edward M. Chen, United States District Judge, on January 23, 2020 at 1:30 P.M. in Courtroom 5, 17th Floor, Phillip Burton Federal Building, 450 Golden Gate Avenue, San Francisco, California 94102.

MOTION FOR SUMMARY JUDGMENT

Plaintiffs Center for Biological Diversity and Center for Environmental Health, hereby move for summary judgment pursuant to the Case Management and Pretrial Order for Rule 52 (ECF No. 22), Fed. R. Civ. P. 56, Local Rules 56, and Judge Chen's Standing Order in Civil Cases.

Plaintiffs are entitled to summary judgment as a matter of law in this Clean Air Act "deadline" suit because Defendant EPA has failed to fulfill its nondiscretionary duties under 42 U.S.C. §§ 7410(c)(1)(A) and (k)(2) with regard to the Yolo-Solano Counties 2006 NAAQS fine particulate matter nonattainment area, Plumas County 2012 NAAQS fine particulate matter nonattainment area, Phoenix-Mesa 2008 NAAQS Ozone nonattainment area, and the Ventura County 2008 Ozone nonattainment area, respectively.

In support of this Motion, Plaintiffs submit a Memorandum of Points and Authorities, accompanying declarations, and a Proposed Order. Accordingly, Plaintiffs respectfully request that this Court grant their Motion for Summary Judgment; declare that EPA has violated the Clean Air Act; and order EPA to complete its nondiscretionary duties as set forth in Plaintiffs' Proposed Order.

Dated: September 30, 2019

Respectfully submitted,

/s/ Robert Ukeiley

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**PLAINTIFFS' MEMORANDUM OF
 POINTS AND AUTHORITIES IN
 SUPPORT OF MOTION FOR
 SUMMARY JUDGMENT**

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GLOSSARY OF ACRONYMS

CTG	Control Technique Guideline
EPA	Administrator of the United States Environmental Protection Agency
FIP	Federal Implementation Plan
NAAQS	National Ambient Air Quality Standards
NO _x	Nitrogen Oxides
NSR	New Source Review
PM _{2.5}	Fine particulate matter
RACT	Reasonably Achievable Control Technology
SIP	State Implementation Plan
VOC	Volatile Organic Compound

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PLAINTIFFS' MEMORANDUM OF POINTS AND
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Almost half a century ago, Congress enacted the Clean Air Act, which made a promise to “**speed up**, expand, and intensify the war against air pollution in the United States with a view to assuring that the air we breathe throughout the Nation is wholesome again.”¹ The Clean Air Act imposes the necessary requirements to fulfill its promise to safeguard national air quality on states and the United States Environmental Protection Agency in a system of cooperative federalism where states are responsible for certain actions and EPA is responsible for other actions.

This case concerns one of the most fundamental requirements of the Clean Air Act: the implementation of National Ambient Air Quality Standards (“NAAQS”) for ground level ozone and fine particulate matter (“PM2.5”). These air pollutants endanger public health and welfare, particularly in parts of the country like the ones at issue in this case which EPA has already determined have air pollution levels that exceed the NAAQS. Plaintiffs Center for Biological Diversity and Center for Environmental Health seek to compel the United States Environmental Protection Agency’s Administrator, Andrew Wheeler, (“EPA”) to take the nondiscretionary actions required by the Clean Air Act to protect the public health and welfare from the effects of PM2.5 and ozone pollution. Specifically, this lawsuit seeks to compel EPA to perform nondiscretionary duties for which the statutory deadline has passed under 42 U.S.C. § 7410(c)(1)(A) and (k)(2)-(4) with regard to the Yolo-Solano Counties 2006 PM2.5 NAAQS nonattainment area; the Plumas County 2012 PM2.5 NAAQS nonattainment area; and the Phoenix-Mesa and Ventura County 2008 Ozone NAAQS nonattainment areas.²

¹ H.R. Report No. 91-1146, at 1 (1970), *reprinted in* 1970 U.S.C.C.A.N. 5356, 5356 (emphasis added).

² Plaintiffs begin by noting that it is unfortunate that Plaintiffs have to take the Court’s time by filing a Motion for Summary Judgment in a case where the Defendant conceded liability in both its Answer and in the Joint Case Management Statement. Plaintiffs made it very clear to Defendant that Plaintiffs were willing to engage in settlement discussions to come to an agreement about a mutually agreeable remedy, which the parties could present to the Court as a proposed consent decree. Defendant refused to engage in settlement discussions. Plaintiffs

II. STATEMENT OF ISSUES

1. Have Plaintiffs met their burden under Fed. R. Civ. P. 56 to demonstrate that there is no genuine dispute of material facts that EPA has failed to perform duties that are not discretionary under the Clean Air Act?

2. Is Plaintiffs' requested remedy impossible for EPA to meet?

III. BACKGROUND

A. Clean Air Act Statutory Framework.

The overarching commitment of the Clean Air Act is "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." 42 U.S.C. § 7401(b)(1). To that end, Congress mandated the Administrator of the United States Environmental Protection Agency ("EPA") to establish National Ambient Air Quality Standards ("NAAQS") for a limited number of pollutants, "criteria pollutants," that "cause or contribute to air pollution, which may reasonably be anticipated to endanger public health or welfare." *Id.* § 7408(a)(1)(A). Currently there are six criteria pollutants. The two relevant to this case are fine particulate matter, which people commonly refer to as soot, and ground level ozone, which people commonly refer to as smog. Ozone in the stratosphere is critical to protecting the planet from the harmful effects of ultraviolet radiation. However, when ozone is found at ground level, that is in the troposphere, it is a dangerous pollutant that causes a variety of public health and welfare adverse impacts.

NAAQS come in two varieties—a primary and secondary standard. The primary NAAQS provides for "an adequate margin of safety...to protect the public health." The secondary NAAQS "protects the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutants in the ambient air." *Id.* § 7409(b)(1)-(2). The Clean Air Act defines public welfare to include soils, crops, vegetation, animals, wildlife, and

continue to be open to negotiations and are prepared to settle this lawsuit. The parties have a history of settling similar claims in prior lawsuits without having to first move for summary judgment.

1 climate. *Id.* § 7602(h).

2 The Clean Air Act requires EPA review, and as necessary, revise the NAAQS every five
3 years. *Id.* § 7409(d)(1). When EPA revises a NAAQS, it does not necessarily replace or repeal
4 the previous NAAQS. Therefore, there can be multiple NAAQS for the same pollutant and each
5 NAAQS has to be independently implemented by EPA and the States. In this case,
6 implementation of the 2006 PM_{2.5} NAAQS as well as the 2012 PM_{2.5} NAAQS are at issue.
7 The 2006 PM_{2.5} NAAQS is 35 micrograms per cubic meter based on a 24-hour averaging time
8 while the 2012 PM_{2.5} is 12 micrograms per cubic meter based on an annual averaging time.

9 After promulgating a new or revised NAAQS, the EPA determines whether geographic
10 areas are designated nonattainment (areas that do not meet the primary or secondary NAAQS),
11 attainment (areas that meet the primary or secondary NAAQS), or unclassifiable (areas that
12 cannot be classified based on available information). *Id.* § 7407(d)(1)(A). States are required to
13 submit State Implementation Plans (“SIPs”) and plan revisions that “provide for the
14 implementation, maintenance, and enforcement” of any NAAQS by set due dates. *Id.* §§
15 7410(a)(1); 7502(b). For areas that have been designated nonattainment, these SIPs are known
16 as nonattainment SIPs. *Id.* Nonattainment SIPs are made up of multiple elements, depending on
17 the NAAQS at issue. *Id.* §§ 7502 – 7514a.

18 If a state fails to submit an element of a nonattainment SIP, EPA is required to make a
19 finding that the state failed to submit that element within six months of the due date for that
20 submittal. *Id.* § 7410(k)(1)(B). This finding is known as a “finding of failure to submit.”
21 Within two years of EPA finding that a state failed to submit a required SIP element or SIP
22 revision by the required deadline for submittal, EPA must promulgate a Federal Implementation
23 Plan (“FIP”) to fill the gap left by the state’s failure to submit the SIP element. *Id.* § 7410(c).
24 However, if the state subsequently submits the SIP element and EPA approves that SIP element,
25 EPA is released from its statutory obligation to promulgate a FIP. *Id.*

26 If a state does submit an element of a nonattainment SIP, EPA is required to determine if
27

the submittal is administratively complete with 60 days of its submittal. *Id.* § 7410(k)(1)(B). If EPA fails to determine if an element of a nonattainment SIP is administratively complete, after six months the submittal is deemed by operation of law. *Id.* EPA is required to take final action to approve, disapprove, or conditionally approve a submittal of an element of a nonattainment SIP within twelve months of the submittal being found or deemed by operation of law administratively complete. *Id.* § 7410(k)(2)-(4).

B. Adverse Impacts of Particulate Matter and Ozone Pollution.

Fine particulate matter is less than 2.5 microns in diameter (“PM_{2.5}”) and is “produced chiefly by combustion processes and by atmospheric reactions of various gaseous pollutants,” from “motor vehicles, power generation, combustion sources at industrial facilities, and residential fuel burning.”³ Ozone forms when precursor pollutants, volatile organic compounds (“VOC”) react with Nitrogen Oxides (“NO_x”) in the presence of heat and sunlight.⁴ These precursor pollutants originate from a variety of sources, but the main producers are large industrial sources, mobile sources such as cars and trucks, and the fossil-fueled generation of electric power.⁵

Through extensive review of the copious scientific literature, EPA has concluded that there are direct connections between PM_{2.5} and ozone pollution and human health and the natural world.⁶ Exposure to these pollutants has been linked to negative respiratory health effects, cardiovascular effects, central nervous system effects, reproductive and development effects, and even an increase in premature mortality.⁷ These health effects manifest as cancer,

³ 71 Fed. Reg. 61,144, 61,146 (Oct. 17, 2006).

⁴ United States Environmental Protection Agency, Integrated Science Assessment for Ozone and Related Photochemical Oxidants 3-5 – 3-10 (2013), <https://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=247492>.

⁵ See 75 Fed. Reg. 2,938, 2,941 (Jan. 19, 2010).

⁶ United States Environmental Protection Agency, Integrated Science Assessment for Ozone and Related Photochemical Oxidants 3-5 – 3-10 (2013), <https://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=247492>. United States Environmental Protection Agency, Integrated Science Assessment for Particulate Matter (2009), <https://www.epa.gov/isa/integrated-science-assessment-isa-particulate-matter>.

⁷ United States Environmental Protection Agency, Policy Assessment for the Review of Ozone National Ambient Air Quality Standards (First External Review Draft) (2012),

worsening respiratory and cardiovascular health, including worsened asthma, COPD, inflammation, heart attacks, strokes, heart disease, and congestive heart failure; increased likelihood of early death; increased asthma-related hospital admissions; increased likelihood of children developing asthma as adolescents; and lower birthweights and decreased lung function in newborns.”⁸ The demographic most impacted by PM_{2.5} and ozone pollution are: older adults, people with heart and lung disease, active people such as athletes and people who work outside, and children.⁹

EPA has also connected ozone pollution to negative impacts in some plant species such as: stunted growth, interference with photosynthesis, and increased susceptibility to disease, weather, and insects.¹⁰ These negative effects have damaging consequences on the surrounding ecosystem, including loss of biodiversity, habitat degradation, and water, nutrient, and carbon cycling.¹¹ PM_{2.5} also adversely impacts wildlife. According to EPA, “a number of animal toxicological . . . studies had reported health effects associations with high concentrations of numerous fine particle components.”¹²

IV. STATEMENT OF UNDISPUTED MATERIAL FACTS

A. Yolo-Solano Counties 2006 PM_{2.5} NAAQS Nonattainment Area.

EPA promulgated revised fine particulate matter National Ambient Air Quality Standards in 2006 (“2006 PM_{2.5} NAAQS”).¹³ Pursuant to 42 U.S.C. § 7407(d), EPA designated and classified Sacramento, California and Yolo-Solano Counties, as a Moderate nonattainment area

[https://yosemite.epa.gov/sab/sabproduct.nsf/264cb1227d55e02c85257402007446a4/B5245F80039F6368525774A0064E38B/\\$File/First+external+review+draft+O3+Policy+Assessment+for+CASAC.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/264cb1227d55e02c85257402007446a4/B5245F80039F6368525774A0064E38B/$File/First+external+review+draft+O3+Policy+Assessment+for+CASAC.pdf).

⁸ United States Environmental Protection Agency, Integrated Science Assessment for Ozone and Related Photochemical Oxidants 3-5 – 3-10 (2013), <https://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=247492>; United States Environmental Protection Agency, Integrated Science Assessment for Particulate Matter (2009), <https://www.epa.gov/isa/integrated-science-assessment-isa-particulate-matter>.

⁹ See 78 Fed. Reg. 3086, 3088 (Jan. 15, 2013); 62 Fed. Reg. 38,653, 38,668 (July 18, 1997); 73 Fed. Reg. 16,436, 16,440 (Mar. 27, 2008).

¹⁰ United States Environmental Protection Agency, Ground-level Ozone Pollution, <https://www.epa.gov/ground-level-ozone-pollution/ecosystem-effects-ozone-pollution> (last visited Sept. 29, 2019).

¹¹ *Id.*

¹² 71 Fed. Reg. 2,620, 2,643 – 2,644 (Jan. 17, 2006).

¹³ 71 Fed. Reg. 61,144 (Oct. 17, 2006).

for the 2006 PM_{2.5} NAAQS.¹⁴ The Clean Air Act requires States with Moderate PM_{2.5} nonattainment areas to submit a state implementation plan (“SIP”), providing for nonattainment New Source Review permitting rules “for the construction and operation of new and modified major stationary sources” of fine particulate matter in nonattainment areas. 42 U.S.C. § 7513a(a)(1)(A). On May 16, 2008, EPA issued a final rule establishing the requirements for the 2006 PM_{2.5} NAAQS New Source Review permitting rules.¹⁵ On June 2, 2014, EPA issued a final rule revising requirements for the 2006 PM_{2.5} NAAQS, including a requirement for States to submit SIP revisions addressing the PM_{2.5} permitting requirements by December 31, 2014. On June 8, 2016, EPA made a finding that California failed to submit the New Source Review (“NSR”) element of a nonattainment SIP for the Yolo-Solano Counties nonattainment area.¹⁶ EPA’s finding became effective on July 8, 2016.¹⁷ Thus, EPA had a nondiscretionary duty to promulgate a FIP addressing the New Source Review element for the Yolo-Solano Counties 2006 PM_{2.5} NAAQS nonattainment area by no later than July 8, 2018. 42 U.S.C. § 7410(c).

It is now more than 14 months after July 8, 2018. EPA admits that it has not promulgated a FIP implementing the New Source Review permitting requirements in 42 U.S.C. § 7513a(a)(1)(A) for the Yolo-Solano Counties 2006 PM_{2.5} NAAQS nonattainment area. Def.’s Answer ¶¶ 33, 52-53 (ECF No. 23)

On July 11, 2019, EPA issued a *proposed* rule to “approve a rule governing issuance of permits for stationary sources, including review and permitting of major sources and major modifications under part D of title I of the Clean Air Act (CAA or “the Act”)” for Yolo-Solano Counties 2006 PM_{2.5} NAAQS nonattainment area.¹⁸ This rule, if finalized, will obviate EPA’s nondiscretionary duty to promulgate a FIP. 42 U.S.C. § 7410(c). Proposed rules, however, have no legal effect and do not obviate EPA’s mandatory duty to promulgate a FIP. *Id.*

¹⁴ 74 Fed. Reg. 58,688, 58,709 (Nov. 13, 2009).

¹⁵ 73 Fed. Reg. 28,321 (May 16, 2008).

¹⁶ See 81 Fed. Reg. 36,803 (Jun. 8, 2016).

¹⁷ *Id.*

¹⁸ 84 Fed. Reg. 33,030 (July 11, 2019).

B. Plumas County 2012 PM2.5 NAAQS Nonattainment Area.

EPA promulgated a revised PM2.5 NAAQS in 2012 (the “2012 PM2.5 NAAQS”).¹⁹ Pursuant to 42 U.S.C. § 7407(d), EPA designated and classified part of Plumas County, California as a Moderate nonattainment area for the 2012 PM2.5 NAAQS.²⁰ The Clean Air Act requires Moderate PM2.5 nonattainment areas to submit a SIP providing “for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date . . . as contingency measures to take effect in any such case without further action by the State or the Administrator,” 42 U.S.C. § 7502(c)(9) (hereafter, “PM2.5 Contingency Measures”), within “18 months after the designation [of the area] as nonattainment.” *Id.* § 7513a(a)(2)(B).

On February 28, 2017, California submitted the Portola Fine Particulate Matter PM2.5 Attainment Plan (the “Portola Plan”) which included the PM2.5 Contingency Measures element for the 2012 PM2.5 NAAQS nonattainment SIP. Portola is a town in Plumas County in the Moderate nonattainment area. The Portola Plan was deemed complete by operation of law on August 28, 2017.²¹ EPA has a mandatory duty to take final action on state submittals within twelve months of those submittals becoming administratively complete. 42 U.S.C. § 7410(k)(2)-(4). Therefore, EPA was required to take final action on the Portola Plan by August 28, 2018. On March 25, 2019, EPA issued a final rule approving all elements of the Portola Plan for the 2012 PM2.5 NAAQS except the PM2.5 Contingency Measures element.²² EPA admits that it has not taken final action on the portion of the Portola Plan addressing the PM2.5 Contingency Measures element as required by 42 U.S.C. § 7502(c)(9). Def.’s Answer ¶ 42 (ECF No. 23).

¹⁹ 78 Fed. Reg. 3,086 (Jan. 15, 2013).

²⁰ 80 Fed. Reg. 2,206, 2,218 (Jan. 15, 2015).

²¹ 83 Fed. Reg. 64,774, 64,776 (Dec. 18, 2018). *See also* United States Environmental Protection Agency, California: PM-2.5 (2012)/Plumas County, https://www3.epa.gov/airquality/urbanair/sipstatus/reports/ca_elembypoll.html#pm-2.5_2012_1668 (last visited Sept. 29, 2019).

²² 84 Fed. Reg. 11,208 (Mar. 25, 2019). The rule went into effect on April 24, 2019.

C. Phoenix-Mesa 2008 Ozone NAAQS Nonattainment Area.

EPA promulgated a final rule revising the Ozone National Ambient Air Quality Standards in 2008 (the “2008 Ozone NAAQS”).²³ Pursuant to 42 U.S.C. § 7407(d), EPA designated the Phoenix-Mesa, Arizona area as nonattainment for the 2008 Ozone NAAQS.²⁴ EPA reclassified the Phoenix-Mesa nonattainment area to a Moderate nonattainment area after finding that the area failed to attain the 2008 Ozone NAAQS by the applicable attainment date.²⁵ Subsequently, EPA imposed a January 1, 2017 deadline for Moderate nonattainment areas to address the requirements in 42 U.S.C. § 7511a(b), providing for the following SIP elements: Contingency Measures for Volatile Organic Compounds (“VOCs”) and Nitrogen Oxides (“NO_x”), Moderate Area Reasonable Further Progress (“RFP”) Plan for Volatile Organic Compounds (“VOCs”) and Nitrogen Oxides (“NO_x”), Moderate Ozone Attainment Demonstration, and Reasonably Achievable Control Technology (“RACT”).²⁶ On December 19, 2016, Arizona submitted a state implementation plan addressing the first three elements listed in Table 1 below, *i.e.*, the Contingency Measures for the Volatile Organic Compounds (“VOCs”) and Nitrogen Oxides, Moderate Area Reasonable Further Progress Plan for Volatile Organic Compounds (“VOCs”) and Nitrogen Oxides (“NO_x”), and Moderate Ozone Attainment Demonstration.

On June 22, 2017, Arizona submitted a SIP revision, addressing the remaining nonattainment SIP elements listed in Table 1, *i.e.*, Reasonably Achievable Control Technology (“RACT”). Arizona’s submittals were deemed complete by operation of law on June 19, 2017 and December 22, 2018, respectively.²⁷ EPA has a nondiscretionary duty to take final action

²³ 73 Fed. Reg. 16,436 (Mar. 27, 2008).

²⁴ 77 Fed. Reg. 30,088, 30,097 (May 21, 2012).

²⁵ 81 Fed. Reg. 26,697 (May 4, 2016).

²⁶ *Id.* at 26,699. *See also* Joint Case Management Statement (ECF No. 17) at 4-5 (detailing the required SIP elements for the Phoenix-Mesa, Arizona nonattainment area under the 2008 ozone NAAQS).

²⁷ United States Environmental Protection Agency, Arizona: Ozone-8Hr (2008)/ Phoenix-Mesa, https://www3.epa.gov/airquality/urbanair/sipstatus/reports/az_elembypoll.html#ozone-8hr_2008_1430 (last visited Sept. 28, 2019).

within twelve months of a SIP becoming administratively complete (that is, by June 19, 2018 and December 22, 2018, respectively). 42 U.S.C. § 7410(k)(2)-(4). EPA admits that it has not taken final action on Arizona's submittals for all but one nonattainment SIP element. Def.'s Answer ¶ 47 (ECF No. 16).

On August 27, 2019, EPA issued a final rule approving nonattainment SIP elements for the Phoenix-Mesa 2008 Ozone NAAQS nonattainment area that address the Reasonably Achievable Control Technology ("RACT") for Volatile Organic Compounds ("VOCs") Control Technique Guidelines ("CTGs") for Graphic Arts - Rotogravure and Flexography and for Wood Furniture.²⁸ The final rule went into effect on September 29, 2019.²⁹ Because EPA has taken final action approving these two nonattainment SIP elements, Plaintiffs' claims against EPA under 42 U.S.C. § 7410(k)(2) with respect to those two SIP elements are now moot. Thus, Plaintiffs do not move for summary judgment on those two nonattainment SIP elements. Plaintiffs have listed the SIP elements for which they are still seeking summary judgment in Table 1 below.

TABLE 1: PHOENIX-MESA 2008 OZONE NAAQS NONATTAINMENT SIP ELEMENTS

Element	SIP Requirement	Submittal Date	Completion Date (no later than)	Final Action Due Date
1	Contingency Measures Volatile Organic Compounds ("VOC") and Nitrogen Oxides ("NOx")	12/19/2016	06/19/2017	6/19/2018
2	Reasonable Further Progress ("RFP") VOC and NOx – Moderate	12/19/2016	6/19/2017	6/19/2018
3	Ozone Attainment Demonstration	12/19/2016	6/19/2017	6/19/2018

²⁸ *Id.*

²⁹ *Ibid.*

4	Reasonable Available Control Technology ("RACT") Non-Control Technology Guidelines ("CTG") VOC for Major Sources	6/22/2017	12/22/2017	12/22/2018
5	RACT NOx for Major Sources	6/22/2017	12/22/2017	12/22/2018
6	RACT VOC CTG Aerospace	6/22/2017	12/22/2017	12/22/2018
7	RACT VOC CTG Auto and Light-Duty Truck Assembly Coatings (2008)	6/22/2017	12/22/2017	12/22/2018
8	RACT VOC CTG Bulk Gasoline Plants	6/22/2017	12/22/2017	12/22/2018
9	RACT VOC CTG Equipment Leaks from Natural Gas/Gasoline Processing Plants	6/22/2017	12/22/2017	12/22/2018
10	RACT VOC CTG Factory Surface Coating of Flat Wood Paneling	6/22/2017	12/22/2017	12/22/2018
11	RACT VOC CTG Fiberglass Boat Manufacturing Materials (2008)	6/22/2017	12/22/2017	12/22/2018
12	RACT VOC CTG Flat Wood Paneling Coatings (2006)	6/22/2017	12/22/2017	12/22/2018
13	RACT VOC CTG Flexible Packaging Printing Materials (2006)	6/22/2017	12/22/2017	12/22/2018

14	RACT VOC CTG Fugitive Emissions from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment	6/22/2017	12/22/2017	12/22/2018
15	RACT VOC CTG Industrial Cleaning Solvents (2006)	6/22/2017	12/22/2017	12/22/2018
16	RACT VOC CTG Large Appliance Coatings (2007)	6/22/2017	12/22/2017	12/22/2018
17	RACT VOC CTG Large Petroleum Dry Cleaners	6/22/2017	12/22/2017	12/22/2018
18	RACT VOC CTG Leaks from Gasoline Tank Trucks and Vapor Collection Systems	6/22/2017	12/22/2017	12/22/2018
19	RACT VOC CTG Leaks from Petroleum Refinery Equipment	6/22/2017	12/22/2017	12/22/2018
20	RACT VOC CTG Lithographic Printing Materials and Letterpress Printing Materials (2006)	6/22/2017	12/22/2017	12/22/2018
21	RACT VOC CTG Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins	6/22/2017	12/22/2017	12/22/2018
22	RACT VOC CTG Manufacture of Pneumatic Rubber Tires	6/22/2017	12/22/2017	12/22/2018

23	RACT VOC CTG Manufacture of Synthesized Pharmaceutical Products	6/22/2017	12/22/2017	12/22/2018
24	RACT VOC CTG Metal Furniture Coatings (2007)	6/22/2017	12/22/2017	12/22/2018
25	RACT VOC CTG Miscellaneous Industrial Adhesives (2008)	6/22/2017	12/22/2017	12/22/2018
26	RACT VOC CTG Miscellaneous Metal Products Coatings (2008)	6/22/2017	12/22/2017	12/22/2018
27	RACT VOC CTG Paper, Film, and Foil Coatings (2007)	6/22/2017	12/22/2017	12/22/2018
28	RACT VOC CTG Petroleum Liquid Storage in External Floating Roof Tanks	6/22/2017	12/22/2017	12/22/2018
29	RACT VOC CTG Plastic Parts Coatings (2008)	6/22/2017	12/22/2017	12/22/2018
30	RACT VOC CTG Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds	6/22/2017	12/22/2017	12/22/2018
31	RACT VOC CTG SOCMI Air Oxidation Processes	6/22/2017	12/22/2017	12/22/2018
32	RACT VOC CTG SOCMI Distillation and Reactor Processes	6/22/2017	12/22/2017	12/22/2018

33	RACT VOC CTG Shipbuilding/repair	6/22/2017	12/22/2017	12/22/2018
34	RACT VOC CTG Solvent Metal Cleaning	6/22/2017	12/22/2017	12/22/2018
35	RACT VOC CTG Stage I Vapor Control Systems - Gasoline Service Stations	6/22/2017	12/22/2017	12/22/2018
36	RACT VOC CTG Storage of Petroleum Liquids in Fixed Roof Tanks	6/22/2017	12/22/2017	12/22/2018
37	RACT VOC CTG Surface Coating for Insulation of Magnet Wire	6/22/2017	12/22/2017	12/22/2018
38	RACT VOC CTG Surface Coating of Automobiles and Light-Duty Trucks	6/22/2017	12/22/2017	12/22/2018
39	RACT VOC CTG Surface Coating of Cans	6/22/2017	12/22/2017	12/22/2018
40	RACT VOC CTG Surface Coating of Coils	6/22/2017	12/22/2017	12/22/2018
41	RACT VOC CTG Surface Coating of Fabrics	6/22/2017	12/22/2017	12/22/2018
42	RACT VOC CTG Surface Coating of Large Appliances	6/22/2017	12/22/2017	12/22/2018
43	RACT VOC CTG Surface Coating of Metal Furniture	6/22/2017	12/22/2017	12/22/2018

44	RACT VOC CTG Surface Coating of Miscellaneous Metal Parts and Products	6/22/2017	12/22/2017	12/22/2018
45	RACT VOC CTG Surface Coating of Paper	6/22/2017	12/22/2017	12/22/2018
46	RACT VOC CTG Tank Truck Gasoline Loading Terminals	6/22/2017	12/22/2017	12/22/2018
47	RACT VOC CTG Use of Cutback Asphalt	6/22/2017	12/22/2017	12/22/2018

D. Ventura County 2008 Ozone NAAQS Nonattainment Area.

EPA reclassified the Ventura County nonattainment areas as a Serious nonattainment area for the 2008 Ozone NAAQS.³⁰ Subsequently, EPA imposed a deadline for Serious nonattainment areas to address the requirements in 42 U.S.C. § 7511a(c), providing for the following nonattainment SIP elements: Serious Area Contingency Measures, Ozone Emission Inventory, Ozone Emission Statement, Serious Area Reasonable Further Progress (“RFP”) Plan for Volatile Organic Compounds (“VOC”) and Nitrogen Oxides (“NO_x”), and Serious Area Ozone Attainment Demonstration.³¹

On July 17, 2014, California submitted a SIP revision, addressing the Emission Inventory element for the Ventura County 2008 Ozone NAAQS serious nonattainment area. On April 11, 2017, California submitted a SIP revision addressing the: Contingency Measures, Ozone Emission Statement, Serious Area Reasonable Further Progress (“RFP”) Plan for Volatile Organic Compounds (“VOC”) and Nitrogen Oxides (“NO_x”), and Serious Area Ozone Attainment Demonstration elements. These submittals were deemed complete by operation of

³⁰ 77 Fed. Reg. 30,160 (May 21, 2012).

³¹ See 80 Fed. Reg. 12,264 (Mar. 6, 2015); *see also*, Joint Case Management Statement (ECF No. 17) at 8-10 (detailing the required SIP elements for Ventura County (part) nonattainment under the 2008 NAAQS).

law on January 17, 2015 and October 11, 2017, respectively.³² Pursuant to 42 U.S.C. § 7410(k)(2)-(4), EPA is required take final action within twelve months of a SIP submittal becoming administratively complete (that is, by January 17, 2016 and October 11, 2018, respectively). EPA admits that it has not taken final action on these Ventura County's nonattainment SIP elements which are listed in Table 2 below. Def.'s Answer ¶ 50 (ECF No. 23).

TABLE 2: VENTURA COUNTY 2008 OZONE NAAQS NONATTAINMENT SIP ELEMENTS

SIP Elements	Submittal Date	Completion Date (no later than)	Final Action Due Date
Contingency Measures Volatile Organic Compounds ("VOC") and Nitrogen Oxides ("NOx")	4/11/2017	10/11/2017	10/11/2018
Emission Inventory	7/17/2014	1/17/2015	1/17/2016
Emission Statement	4/11/2017	10/11/2017	10/11/2018
Ozone Attainment Demonstration	4/11/2017	10/11/2017	10/11/2018
Reasonable Further Progress ("RFP") Volatile Organic Compound ("VOC") and Nitrogen Oxides ("NOx") - Serious	4/11/2017	10/11/2017	10/11/2018

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³² Joint Case Management Statement (ECF No. 17) at 10. *See also* United States Environmental Protection Agency, California: Ozone 8-Hr (2008)/ Ventura County, https://www3.epa.gov/airquality/urbanair/sipstatus/reports/ca_clembypoll.html#ozone-8hr_2008_1445 (last visited Sept. 28, 2019).

V. ARGUMENT

A. Standard of Review

Summary judgment is appropriate when the record shows that “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Material facts are those that may affect the outcome of the case. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute as to a material fact is “genuine” if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *See id.*

Plaintiffs “bear[] the initial responsibility” of “identifying those portions” of the record that “demonstrate the absence of a genuine issue of material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If Plaintiffs carry that initial burden, the burden shifts to EPA to show that sufficient evidence exists for a reasonable jury to find in the nonmoving party’s favor with respect to the “element[s] essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Id.* at 322. In opposing, the nonmoving party “must do more than simply show that there is some metaphysical doubt as to the material facts,” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986); it must set forth competent evidence setting forth specific facts showing that there is a genuine issue for trial. *See* Fed. R. Civ. P. 56(c).

In ordering appropriate relief in a Clean Air Act deadline suit, a district court should compel EPA to correct its statutory violations as soon as possible. 42 U.S.C. § 7604(a)(3). Where there is a clear statutory deadline, EPA bears the especially “heavy” burden of proving that expeditious compliance would be “impossible.” *Sierra Club v. Thomas*, 658 F. Supp. 165, 170-72 (N.D. Cal. 1987); *see also Sierra Club v. Johnson*, 444 F. Supp.2d 46, 52 (D.D.C. 2006) (explaining that courts may decline to impose an “immediate” deadline only if it is impossible for the agency to meet).

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B. Standing

In order for a plaintiff organization to have standing, it must prove the following: “(1) its members would have standing to sue on their own; (2) the interests it seeks to protect are germane to its purpose, and (3) its claim and requested relief do not require participation by individual members.” *Hunt v. Washington State Apple Adver. Comm’n*, 432 U.S. 333, 343 (1977). Furthermore, Plaintiffs must prove standing for each claim it asserts. *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006).

First, the Center for Biological Diversity’s members have standing to sue in their own right because they have suffered an “injury in fact;” the injury is “fairly traceable” to the challenged illegal conduct; and it “likely,” as opposed to merely “speculative,” that the injury will be redressed by a favorable decision.” *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 180-181 (2000) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992)). In environmental cases, plaintiffs can demonstrate harm “by showing a connection to the area of concern sufficient to make credible the connection that the person’s life will be less enjoyable—that he or she really has or will suffer in his or her degree of aesthetic or recreational satisfaction—if the area in question remains or becomes environmentally degraded.” *Ecological Rights Found. v. Pac. Lumber Co.*, 230 F.3d 1141, 1149 (9th Cir. 2000). Furthermore, “evidence of a credible threat to the plaintiff’s physical well-being from airborne pollutants falls well within the range of injuries to cognizable interest that may confer standing.” *Hall v. Norton*, 266 F.3d 969, 976 (9th Cir. 2001).

Plaintiff Center for Biological Diversity has members who reside, recreate, and work in each of the nonattainment areas at issue in this case. Strailey Decl. ¶2; Schneider Decl. ¶2; Reinhart Decl. ¶2; Segee Decl. ¶4. These members suffer concrete injuries to their current and future physical well-being and quality of life. Strailey Decl. ¶¶5-6; Schneider Decl. ¶¶4-5; Reinhart Decl. ¶4-5; Segee Decl. ¶¶4-5, 7-13, 15. *Natural Res. Def. Council v. EPA*, 507 F.2d 905, 910 (9th Cir. 2004) (holding that a plaintiff “suffer[s] injury if compelled to breathe air less

pure than that mandated by the Clean Air Act”). These concerns are reasonable in light of EPA’s conclusions about the serious health effects linked to exposure to particulate matter and ozone pollution.

Plaintiff’s members also allege limitations on their ability to pursue recreational and aesthetic environmental interests in the affected nonattainment areas due to air pollution. Strailey Decl. ¶¶8, 10; Schneider Decl. ¶¶ 9-11; Reinhart Decl. ¶¶4-6; Segee Decl. ¶¶10, 12, 13, 15; *see also Ecological Rights Found. v. Pac. Lumber Co.*, 230 F.3d 1141, 1149-50 (9th Cir. 2000) (interpreting *Friends of the Earth*, 528 U.S. at 182 (finding that recurring recreational use and allegations of future use is sufficient to demonstrate “injury in fact” due to environmental degradation)).

When plaintiff seeks to vindicate a procedural right conferred by statute, such as the missed Clean Air Act deadlines at issue in this case, plaintiff’s burden of showing “causation” and “redressability” requirements is diminished. *Cantrell v. City of Long Beach*, 241 F.3d 674, 682 (9th Cir. 2001). Plaintiffs can meet this diminished standard in this case. Their injuries are “fairly traceable” to EPA’s failure to perform its mandatory duties in the respective areas, and that their injuries “are likely to be redressed” by an order requiring EPA to review the standards. Plaintiffs’ members injuries are traceable to EPA’s failure to perform its mandatory duties to issue a FIP and take final action on nonattainment SIPs that are designed to regulate PM_{2.5} and ozone emissions from polluting sources in geographic areas that have historically been unable to achieve levels that are protective of the environment, public health, and public welfare. *See Natural Res. Def. Council v. EPA*, 542 F.3d 1235, 1245-46 (9th Cir. 2008) (plaintiffs had standing since they could show agency regulations would likely address their injuries); *Sierra Club v. United States EPA*, 762 F.3d 971, 978 (9th Cir. 2014). Further, this court has jurisdiction to order EPA to comply with its nondiscretionary duties under 42 U.S.C. § 7410(c)(1)(A) and (k)(2), thereby redressing the harms and threatened harms to Plaintiffs’ individual members. 42 U.S.C. § 7604(a)(3).

Because Plaintiff Center for Biological Diversity can demonstrate standing for each claim, the Court need not decide whether Center for Environmental Health has standing. *See Leonard v. Clark*, 12 F.3d 885, 888 (9th Cir. 1994) (explaining that once the court determines that one of the plaintiffs has standing, it need not decide the standing of the others); *Kaahumanu v. Hawai'i*, 682 F.3d 789, 798 (9th Cir. 2012) (citing *Watt v. Energy Action Edu. Found.*, 454 U.S. 151, 160 (1981) (“Because we find [one plaintiff] has standing, we do not consider the standing of the other plaintiffs.”)).

Second, the interests at stake are directly germane to the mission and purpose of the Center for Biological Diversity. *See* Burd Decl. ¶¶ 3,5.

Third, Plaintiffs seek declaratory relief that the EPA violated the Clean Air Act with regard to its nondiscretionary duty to perform each of the mandatory duties listed above and injunctive relief requiring the EPA to perform its mandatory duties by certain dates. Such relief does not require “individualized proof” or the personal participation of Plaintiffs’ individual members. *Hunt v. Wash. State Apple Adver. Comm’n*, 432 U.S. 333, 344 (1977); *Int’l Union v. Brock*, 477 U.S. 274 (1986).

Further, although the Court need not address this issue, Plaintiffs also have standing via informational injury. EPA’s violation of its two mandatory duties at issue in this motion denies the Center for Biological Diversity’s Environmental Health Program information that it needs to prioritize, plan, and conduct its work. *See* Burd Decl. ¶¶ 11-12. Plaintiffs are entitled to this information under the Clean Air Act and EPA’s violation of its nondiscretionary duties denies them of the information they need and are entitled to have. *See Center for Biological Diversity v. Abraham*, 218 F. Supp.2d 1143, 1161 (N.D. Cal. 2002) *citing Federal Election Comm’n v. Akins*, 524 U.S. 11, 24-25 (1998) (denial of information which would be useful for one’s work is injury sufficient to establish standing).

For the foregoing reasons, Plaintiffs have standing to challenge EPA’s failure to comply with its nondiscretionary duties under the Clean Air Act.

C. Plaintiffs are Entitled to Summary Judgment Because EPA Has Failed to Perform Nondiscretionary Duties.

EPA concedes liability. There is no dispute that EPA violated its nondiscretionary duties when it failed to promulgate a FIP addressing the NSR element for the 2006 PM_{2.5} NAAQS for the Yolo-Solano Counties 2006 PM_{2.5} NAAQS nonattainment area pursuant to 42 U.S.C. § 7410(c)(1)(A); or take final action approving, disapproving, or conditionally approving, in whole or part, the PM_{2.5} Contingency Measures for the Plumas County 2012 PM_{2.5} NAAQS nonattainment area, the SIP elements for the Phoenix-Mesa 2008 Ozone NAAQS nonattainment area set forth in Table 1 above, and the SIP elements for the Ventura County 2008 Ozone NAAQS nonattainment area set forth in Table 2 above, pursuant to 42 U.S.C. § 7410 (k)(2), respectively. Def.'s Answer ¶¶ 33, 42, 47, 50 (ECF No. 23). Since liability is not contested, the Court should grant Plaintiffs' motion for summary judgment, issue declaratory relief that EPA is in violation of these nondiscretionary duties, and decide the appropriate remedy—the time for EPA to complete its mandatory duties.

D. This Court Should Compel EPA to Perform Its Nondiscretionary Duties By Set Dates.

Where, as here, EPA has violated its nondiscretionary duties, the Clean Air Act authorizes district courts to “order the Administrator to perform” the required duty or act. *See* 42 U.S.C. § 7604(a)(3) (giving district courts jurisdiction to order the Administrator to perform such mandatory duties or acts under the statute); *see also Sierra Club v. Ruckelshaus*, 602 F.Supp. 892, 898 (N.D. Cal. 1984) (holding courts have the authority to require EPA to comply with statutory deadlines for issuing regulations). EPA has unequivocally failed to perform its nondiscretionary duties with respect to the affected nonattainment areas. Plaintiffs respectfully request that this Court order EPA to perform those duties as expeditiously as described below and reject any arguments by the agency that the proposed deadlines are impossible to meet. *See American Lung Ass'n v. Browner*, 884 F. Supp. 345, 347 (D.Ariz. 1994); *see also Sierra Club v.*

Thomas, 658 F. Supp. 165, 172 (N.D. Cal. 1987) (the burden on the agency to show impossibility “is especially heavy where the agency has failed to demonstrate any diligence whatsoever in discharging its statutory duty...and has in fact ignored that duty for several years.”); *Alabama Power Co. v. Costle*, 636 F.2d 323, 359 (D.C. Cir. 1979) (“The agency’s burden of justification in such a case is especially heavy.”).

1. This Court Should Require EPA to Promulgate a Federal Implementation Plan or Approve a State Implementation Plan Addressing the New Source Review element for the Yolo-Solano Counties 2006 PM2.5 NAAQS Nonattainment Area Within 30 Days of the Court’s Order.

EPA has failed to issue a FIP that addresses the NSR element for the Yolo-Solano Counties 2006 PM2.5 NAAQS nonattainment area within two years of EPA’s finding that California failed to submit a nonattainment SIP element by the statutory deadline(that is, by July 9, 2018). *See* 42 U.S.C. § 7410(c)(1). EPA has exceeded that deadline by more than 14 months.

However, EPA has issued a *proposed rule* that proposes to approve a SIP revision which addresses the NSR element for the nonattainment SIP. If EPA finalized this proposed rule, it would obviate EPA’s nondiscretionary duty to promulgate a FIP. *See* 42 U.S.C. § 7410(c). EPA issued this proposed rule on July 11, 2019.³³ EPA allowed for a 30 day public comment period on the proposed rule which ended on August 12, 2019.³⁴

EPA only received one comment on this proposed rule.³⁵ The comment was submitted by the Center for Biological Diversity and only raises one issue.³⁶ Responding to one comment that raises one issue is not a particularly onerous task.

Plaintiffs therefore request that the Court order EPA to sign a notice of its final rule either

³³ 84 Fed. Reg. 33,030 (July 11, 2019).

³⁴ *Id.*

³⁵ *See* Air Quality Implementation Plan; California; Yolo-Solano Air Quality Management District; Stationary Source Permits (Docket ID: EPA-R09-OAR-2019-165), <https://www.regulations.gov/docket?D=EPA-R09-OAR-2019-0165> (last visited Sept. 28, 2019).

³⁶ *Id.*

1 promulgating a FIP or approving California's SIP submission within thirty days of its Order and
 2 to send the final rule to the Office of the Federal Register within seven business days of
 3 signature.

4 Plaintiffs' request is eminently reasonable. Typically, EPA states that it can issue a final
 5 rule four months after publishing the proposed rule, which would impose a December 12, 2019
 6 deadline for final action. However, the Court cannot order EPA to take final action before the
 7 Court issues its order. As the Hearing on this motion is set for January 23, 2020, requiring EPA
 8 to take final action on this long overdue nondiscretionary duty 30 days after the Court issues an
 9 order gives EPA ample time.

10 2. This Court Should Order EPA to Take Final Action on the PM2.5 Contingency
 11 Measures Addressing the Plumas County 2012 PM2.5 NAAQS Nonattainment
 12 Area Within One Year of the Court's Order.

13 EPA has failed to perform its nondiscretionary duty under 42 U.S.C. § 7410(k)(2)-(4) to
 14 take final action to either approve, disapprove, or conditionally approve, in whole or in part, the
 15 PM2.5 Contingency Measures for the Plumas County 2012 PM2.5 NAAQS nonattainment area
 16 by the statutory deadline (that is, by August 28, 2018).

17 The PM2.5 Contingency Measures were included in the Portola Plan, which was deemed
 18 administratively complete on August 28, 2017. EPA took final action approving the other
 19 nonattainment SIP elements in the Portola Plan on March 25, 2019. EPA, however, declined to
 20 take action on PM2.5 Contingency Measures when it issued its proposed and final rule.³⁷ Still,
 21 EPA had more than 25 months to reach a decision on the PM2.5 Contingency Measures and
 22 Plaintiffs provided more than six months' notice to rectify its discrepancy. Since there is no
 23 dispute on liability, Plaintiffs request that this Court order EPA to issue a proposed rule on the
 24 PM2.5 Contingency Measures within twelve months from the Court's Order but no earlier than
 25 February 28, 2021.

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 27 ³⁷ *Proposed Rule*, 83 Fed. Reg. 64,774 (Dec. 18) 2018; *Final Rule*, 84 Fed. Reg. 11,208 (Mar. 25, 2019).

Twelve months is appropriate because it is the maximum amount of time Congress originally gave EPA to complete this task. *See* 42 U.S.C. § 7410(k)(2). If Congress found that a certain amount of time was appropriate for the agency to complete its statutory duty in the first instance, that timeframe should create an upper bound to the Court's discretion in fashioning an equitable remedy. *See e.g. Sierra Club v. Thomas*, 658 F. Supp. 165, 171 (N.D. Cal. 1987). The burden on an agency of establishing impossibility or infeasibility of acting within the statutory timeframe is heavy and must be carefully scrutinized by the court. *See Communities for a Better Env't v. EPA*, 2008 U.S. Dist. LEXIS 36647 at *8 (N.D. Cal. May 5, 2008). As EPA will not be able to demonstrate impossibility, a 12 month deadline is reasonable.

However, the Rule 52 hearing is set for January 23, 2020. If the Court rules from the bench that would make a 12 month deadline be due on January 23, 2021. Plaintiffs are concerned that that a January 23, 2021 deadline would be difficult to meet if a new administration was inaugurated on January 20, 2021. It is possible that there may not be an EPA Administrator or EPA Region 9 Administrator on that date. Therefore, Plaintiffs request that the due date be no sooner than February 28, 2021, which would allow for there to be an EPA Administrator or Region 9 Administrator, or at least allow the individuals in acting administrator roles to come up to speed in order to sign the final rule.

Plaintiffs also ask the Court to order EPA to forward all the signed rules to the Office of the Federal Register within seven business days of signature. The rule does not become effective until after it is published in the Federal Register so the nondiscretionary duty is not complete and meaningful until this publication occurs. Seven business days is a reasonable amount of time to complete this ministerial task which EPA performs hundreds of times per year.

3. This Court Should Order EPA to Take Final Action on the Outstanding SIP Elements Addressing the Phoenix-Mesa 2008 Ozone NAAQS Nonattainment Area Within One Year of the Court's Order.

EPA has failed to perform its nondiscretionary duty under 42 U.S.C. § 7410(k)(2)-(4) to

take final action to either approve, disapprove, or conditionally approve, in whole or in part, with respect to 47 nonattainment SIP elements listed in Table 1 for the Phoenix-Mesa 2008 Ozone NAAQS nonattainment area by the statutory deadline (that is by, June 19, 2017 and December 22, 2018, respectively). Because EPA has taken final action and approved the nonattainment SIP elements addressing the Reasonably Achievable Control Technology (“RACT”) for Volatile Organic Compounds (“VOCs”) Control Technique Guidelines (“CTGs”) for Graphic Arts - Rotogravure and Flexography and for Wood Furniture, Plaintiffs’ claims for those nonattainment SIP elements are now moot.³⁸ Plaintiffs do not move for summary judgment on those nonattainment SIP elements.

Since there is no dispute on liability for the remaining 47 nonattainment SIP elements listed in Table 1, Plaintiffs request that this Court order EPA to sign a final rule within twelve month of the Court’s Order but no earlier than February 28, 2021 for the reasons explained above.

4. This Court Should Order EPA to Take Final Action on the Outstanding SIP Elements Addressing the Ventura County 2008 Ozone NAAQS Nonattainment Area.

EPA has failed to perform its nondiscretionary duty under 42 U.S.C. § 7410(k)(2)-(4) to take final action to either approve, disapprove, or conditionally approve, in whole or in part, the nonattainment SIP elements for the Ventura County 2008 Ozone NAAQS nonattainment area within the statutory deadline (that is by, January 17, 2016 and October 11, 2017, respectively).

Since there is no dispute on liability for these overdue nonattainment SIP elements listed in Table 2, Plaintiffs request that this Court order EPA to sign a final issue proposed rules within twelve month of the Court’s Order but no earlier than February 28, 2021 also for the reasons explained above.

³⁸ See 84 Fed. Reg. 44,701 (Aug. 27, 2019).

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant Plaintiffs' Motion for Summary Judgment; declare that EPA has violated the Clean Air Act; and order EPA to complete its mandatory duties as set forth in section V above.

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Respectfully submitted,

/s/ Robert Ukeiley

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